

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268 0001

MODIFICATION OF MAIL CLASSIFICATION SCHEDULE
REGARDING FIRST-CLASS MAIL SINGLE-PIECE
RESIDUAL PRICE TABLE

Docket No. MC2013-30

**OPPOSITION OF THE
NATIONAL POSTAL POLICY COUNCIL AND
THE MAJOR MAILERS ASSOCIATION**
(January 17, 2013)

The National Postal Policy Council (“NPPC”) and the Major Mailers Association (“MMA”) hereby respectfully submit this opposition to the Postal Service’s proposal to amend the Mail Classification Schedule to raise rates on mailers of 2-ounce residual letters.¹ The Postal Service’s proposal amounts to a classic bit of “bait and switch,” whether witting or not, that would impose a substantial rate increase on mailers while costing the Postal Service substantial well-earned goodwill from its original second-ounce free rate, not to mention diminished use of this new residual rate. The Commission should reject the proposal as an improper rate increase in violation of 39 U.S.C. §3622(d)(2)(C) and 39 C.F.R. §3010.1, and as inconsistent with Order No. 1541.

By way of background, in the market-dominant rate adjustments that took effect in January 2012, the Postal Service introduced the innovative “second-ounce free” price in First-Class Presort letters. That price provided business mailers with an incentive to make new uses of letter mail without suffering a price penalty for adding

¹ Notice of the United States Postal Service of Minor Classification Changes Related To First-Class Mail Single-Piece Residual Price Table (Jan. 8, 2013) (“USPS Notice”).

material that caused the letter to exceed one ounce. NPPC supported that change, and its members are using it to expand the ways in which they make use of First-Class letter mail.

Over the course of the last year, mailers and the Postal Service recognized that because residual two-ounce pieces were required to pay the Single Piece two-ounce rate, including the additional ounce charge, those residual letters incurred a substantial price burden. That burden created some disincentive to preparing mailings to take advantage of the “second-ounce free” option. Mailers and the Postal Service mutually identified the treatment of residual second-ounce letters as a problem that required correction.

The Postal Service attempted to address this problem in its rate adjustments filed in October 2012.² Unfortunately, the Postal Service chose not to simply extend “second-ounce free” to residual pieces. Instead, it announced a new, higher “blended” rate for Single-Piece Residual Machinable Letters at 48 cents for both one-ounce and two-ounce letters, per a new Table in the Mail Classification Schedule replicated here:

² *United States Postal Service Notice of Market-Dominant Price Adjustment*, at 15-16 & Attachment A, Page 4 (Oct. 11, 2012).

Single-Piece Residual Machinable Letters

<u>Maximum Weight (ounces)</u>	<u>Residual Machinable Letters (\$)</u>
<u>1</u>	<u>0.48</u>
<u>2</u>	<u>0.48</u>
<u>3</u>	<u>0.86</u>
<u>3.5</u>	<u>1.06</u>

United States Postal Service Notice of Market-Dominant Price Adjustment, Attachment A, Page 4 of 128 (October 11, 2012) (“*USPS M-D Notice*”).

As this Table made clear, and as the Postal Service reiterated at that time in its *Notice*, the new price would be “48 cents for up to 2 ounces.” *Id.* at 15. If that were not clear enough, the Postal Service repeated:

This 48-cent price is applicable to *all* the residual pieces weighing up to 2 ounces. A residual letter-shaped piece that weighs more than 2 ounces will pay the first ounce price of 46 cents and 20 cents for each additional ounce.

Id. at 16 (emphasis added). The Postal Service also explained that applying the higher 48 cent price applicable to all 1- and 2-ounce pieces would allow it “to recover the lost additional ounce revenue while making it easy for the mailers to pay accurate postage” (*id.*) because of the single rate.³

³ Chairman’s Information Request No. 1, Question 1 (Jan. 15, 2013) asks the Postal Service to confirm that its price cap calculations underlying the Docket No. R2013-1 rate adjustments assumed that *all* residual pieces up to 2 ounces would pay the 48 cent price, not merely those in “mixed” mailings. The Postal Service’s response is due after the due date of this Opposition.

The Postal Service's October filing (which the Commission approved) was perfectly clear. Residual pieces from a "second-ounce free" Presort mailing would pay 48 cents per piece, without mailers having to "go through the trouble of separating the 1 and 2 ounce pieces." *Id.* Mailers of one-ounce only pieces could mail them as residual pieces at 48 cents⁴ or, presumably, go to the trouble of culling and mailing the 1 ounce pieces separately (although the additional costs of doing so would probably outweigh the postage savings).

As NPPC stated in its comments last fall, it believes that the 48 cent blended rate for 1- and 2-ounce residual single pieces was well-intentioned to help mailers avoid hefty second-ounce charges for residual letters. However, NPPC also noted that its members believed that the proposal in fact would increase their costs for residual letters more than help, and asked that the Postal Service withdraw or revise this proposal.⁵ The Postal Service did not do so.

Thus matters stood until the Postal Service commenced this proceeding. Now, just days before the new rate is scheduled to take effect, the Postal Service is trying to increase rates for 2-ounce letters under the guise of a "minor" classification change.

In particular, the Postal Service now seeks to amend the Table presented above by adding a new footnote that sharply reduces the availability of the rate while raising the price of a 2-ounce residual piece by 18 cents:

⁴ Charging a rate of 48 cents for one-ounce residual pieces would, in effect, charge mailers 2 cents more to run a one-ounce piece through postal automation equipment when it is part of a "mixed" mailing than when it is a standalone letter. This makes no sense from a cost, a rate design, or simplicity of mailing perspective.

⁵ *Comments of the National Postal Policy Council*, Docket No. R2013-1 at 16-17 (Nov. 1, 2012).

Single-Piece Residual Machinable Letters

Maximum Weight (ounces)	Residual Machinable Letters (\$)
1	0.48 ¹
2	0.48 ¹
3	0.86
3.5	1.06

1. This price applies only to mixed mailings of residual one-ounce and two-ounce machinable letters. Single-Piece Machinable Letter prices apply to Residual mailings for which one-ounce residual letters are separated from two-ounce residual letters.

USPS Notice at 3. The new footnote changes the previously-approved MCS language by purporting to limit the 48 cent price to “mixed” mailings containing both 1- and 2-ounce pieces. It also means that residual 2-ounce pieces would pay 66 cents per piece (46 plus 20 cents) – not 48 cents – apparently unless a few token 1-ounce pieces were also in the residual mailing. In short, notwithstanding the plain language in its October *USPS M-D Notice*, the Postal Service now wants to retract its previous description of the new price – in which it said that the “new price will be 48 cents for up to 2 ounces” -- which was unequivocal and unambiguous -- and instead say the new 48-cent price is limited to certain special circumstances.

NPPC and MMA can recall no previous occasion on which the Postal Service has tried to implement a rate increase through a so-called “minor” classification change by changing the availability of a new rate after it has received Commission

approval and on the eve of its effective date. NPPC and MMA urge the Commission to reject the Postal Service proposal on several grounds.

First, the Postal Service's new language is flatly contrary to the notice of market-dominant rate adjustment in which the 48-cent rate was announced. Such a change, and especially at this late date, is not "just and reasonable" under Section 3622(b)(8). Mailers have acted in reliance on the Postal Service's prior statements, modified the software and systems based on the approved October filing, and cannot reasonably be expected to revise their systems less than two weeks before the new price takes effect.

Second, the Postal Service's "classification" change in fact constitutes a rate increase of 37.5 percent on 2-ounce residual letters, from 48 cents to 66 cents, compared to the Mail Classification Schedule language the Commission approved only two months ago. Not only has the Postal Service failed to comply with any of the Commission's regulations covering adjustments to market-dominant rates, but by filing this change on January 8, the Postal Service has also failed give the minimum 45-day notice required by 39 U.S.C. §3622(d)(1)(C).

The Postal Service characterizes its filing in this proceeding as a "minor" classification change, not a rate change, and bases its filing on Commission rules 3020.90 and 3020.91, which govern requests to change the classification schedule. Neither rescues this proposal. Rule 3020.90 requires the Postal Service to ensure that the MCS accurately describes its products; however, nothing in Rule 3020.90

authorizes the Postal Service to make a substantive *change* to a product such as proposed here.

Nor does Rule 3020.91 apply. That rule allows corrections to the Mail Classification Schedule “that do not constitute a proposal to modify the market dominant product list.” Here, however, the new footnote would in fact modify the market-dominant product list approved by the Commission just two months ago.

Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, Docket No. R2013-1 at 81 (Nov. 16, 2012) (Order No. 1541). The new footnote is neither innocuous nor does it correct a typographical error. It is a substantial rate increase on an identifiable category of mail – 2-ounce residual letters.

Apart from these legal defects, the Postal Service now stands to lose much of the goodwill it worked hard to earn from mailers by establishing last year that the second ounce in the Presort categories does not incur additional postage. Due to this last-minute functional bait-and-switch, Presort mailers, including nearly all NPPC and MMA members, having substantial residual mail will be left to invest in making an additional sort of that mail, or adding a few 1-ounce pieces to ensure that the mailing is “mixed,” or paying far higher prices for “pure” residual 2-ounce mailings. Either way, it will mean an unhappy result all around: unexpected expenditures with corporate postal budgets set on expectations derived from the rate approved in Docket No. R2013-1, and little-to-no flexibility to change. This will lead to less use of the second-ounce, less postage revenue, and more electronic diversion. Now is

hardly the time for the Postal Service to be making it difficult for mailers to use its services.

The very fact that the Postal Service has filed this unprecedented “clarification” to revise its previously-approved (but ill-advised) 48-cent blended rate illustrates the problems that the Postal Service encounters when it tries even well-intentioned proposals without thoroughly vetting them with mailers. As NPPC has previously stated, if the Postal Service truly wanted to help Presort mailers in this area, it should simply have extended the concept of “second-ounce free” to residual Single Piece mail, and charged 46 cents.

It appears that sometime between the filing of its original proposal in October 2012 and this month, the Postal Service unilaterally decided to reduce the availability of the new 48-cent rate. This is cannot do, and it cannot rectify its failure in the guise of a “minor” classification change that in fact constitutes a rate increase.

For the foregoing reasons, the National Postal Policy Council and the Major Mailers Association respectfully urge the Commission to reject the Postal Service’s

rate increase (thinly veiled as a “classification” change), and reaffirm that under the prices scheduled to take effect on January 27:

- The price for mixed 1- and 2-ounce mixed residual letters is 48 cents.
- The price for 2-ounce residual letters is 48 cents.

Respectfully submitted,

MAJOR MAILERS ASSOCIATION
Mury Salls
DST Mailing Services
3531 Kilpatrick Lane
Snellville, GA 30039
MLSalls@dstmailingservices.com

Arthur B. Sackler
Executive Director
NATIONAL POSTAL POLICY COUNCIL
1101 17th Street, N.W.
Suite 1220
Washington, D.C. 20036
(202) 955-0097

William B. Baker
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006-2304
Telephone: (202) 719-7255
E-Mail: wbaker@wileyrein.com

Counsel to NATIONAL POSTAL POLICY
COUNCIL